Supreme Court, U.S.
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No. 90-02

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

MARSHALL P. SAFIR,

Petitioner,

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, UNITED STATES LINES, INC., Debtor, and S.S. AMERICAN LANCER, S.S. AMERICAN AQUARIUS, S.S., AMERICAN APOLLO, S.S. AMERICAN LYNX and S.S. AMERICAN ASTRONAUT, their engines, tackles, apparels, furnishings, equipment and appurtenances, in rem,

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF

MARSHALL P. SAFIR
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September 7, 1990

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Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF

In accordance with Rule 15.7, petitioner wishes to call to the attention of the Court a final decision filed August 6, 1990 by Judge Jack Tanner of the U.S. District Court for the Western District of Washington at Tacoma in *Nelson R. Raby, et al. versus M/V Pine Forest, In Rem, Delica Shipping S.A.;* and *Inui Steamship Co. Ltd.* (Docket No. C90-5038T).

The Findings of Fact and Conclusions of Law are set forth in the Supplemental Appendix hereto at pp. 1a through 16a. The ews of the event as reported in the *New York Times* of August 8, 1990 is reprinted at 17a-18a. An earlier news report of the case appeared in the *New York Times* of July 15, 1990 (19a) during the thirty-day period allowed for respondents' brief in opposition to this petition. Respondents elected not to oppose the grant of certiorari.

In the *Pine Forest* case the District Court ordered that 21 Filipino seamen who were owed $150,000 in back wages and were entitled to penalty wages under 46 U.S.C. §10313 in the amount of $7,500,000 were also entitled to additional compensatory damages of $7,500,000 and punitive damages of $17,000,000 for deceptive double bookkeeping wage practices and other unconscionable conduct including "black listing," c.f. *Pino v. Protection Maritime Insurance Co. Ltd.*, 490 F.Supp. 277, 281 (D. Mass. 1980) citing *Vaughan v. Atkinson*, 369 U.S. 527, 540 (1962), on remand of *Pino*, 599 F.2d 10 (1st Cir.), *cert. denied*, 444 U.S. 900 (1979).

The relevance of the *Pine Forest* decision to the instant petition is that the District Court has followed the trend towards the use of equitable relief in admiralty by setting both statutory and common law damages at an amount equal to the unjust enrichment of the defendants. The award of damages against the M/V Pine Forest *in rem* and the other defendants *in personam* was based on testimony that the deceptive wage practices and other unconscionable conduct had existed over a period of eight years and that the defendants had been enriched unjustly by the illegal underpayments totaling $35,000,000.

The defendants had posted a bond of $19,000,000 for release of the vessel with the Clerk of the District Court. When a notice of appeal was filed in the Ninth Circuit, the District Court ordered that the bond be increased to $59,000,000 to cover

accruing penalties and interest for a stay of the $35,000,000 judgment pending appeal. The Circuit Court panel issued a temporary stay on August 23, 1990 pending additional briefing by the appellees in explanation of the additional bonding requirement.

In the *Safir* case the offending ship lines were unjustly enriched by the *over* payments of wage subsidies to which they were not entitled and the U.S. Lines total alone was certified as $34,837,390 before interest since 1966. The proceeds of the Lancer class vessels which amounted to $65,000,000 represented a sum less than Safir lien which arose prior to the recordation and endorsement of the Prudential mortgages (46 U.S.C. §953(a)(1)).

CONCLUSION

A plaintiff should have the same remedies of damages, injunction and/or restitution available to him if his case is in admiralty as he would if it were not. A federal judge sitting in admiralty should — as did Judge Tanner — "dispense that which equity and good conscience impels."

Respectfully submitted,

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271 Grand Central Parkway
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September 7, 1990

SUPPLEMENTAL APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NELSON R. RABY, et al., Plaintiff,	)	NO. C90-5038T
-vs.-	)	
M/V PINE FOREST, *In rem*, DELICA SHIPPING, S.A.; and INUI STEAMSHIP CO., LTD. Defendant.	)	**FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT**

THIS MATTER having come on for trial before the above-named court sitting without a jury, and plaintiffs being represented by counsel, and defendants being represented by counsel, and plaintiffs having produced evidence in support of their claims, and defendants having also produced evidence in this matter, and the court having heard and considered the argument of counsel, and the court being fully advised in this matter, now makes the following:

FINDINGS OF FACT

1. The plaintiffs are thirteen Filipino seafarers represented by individual counsel, and eight Filipino seamen represented by AMOSUP (Associated Marine Officers and Seamen's Union of the Philippines). AMOSUP makes no claim of its own. All 21 seamen were employed to serve as seamen on board the M/V Pine Forest (defendant *in rem*), a vessel owned by defen-

dant Delica Shipping, S.A., a Panamanian corporation, and flying the flag of the Republic of Vanuatu. The manager and operator of the vessel is defendant Inui Steamship Co., Ltd., a Japanese shipping company.

2. Plaintiffs Raby, Alvardo and Berido were the only plaintiffs who personally actually testified at the time of trial. The other ten plaintiffs did not personally appear in court. Their failure to personally appear does not appear to be of their own doing. The court therefore finds that they were "unavailable" for trial. In these circumstances the depositions of the absent plaintiffs are admissible under Rule 32 of the Federal Rules of Civil Procedure and Rule 804(B) of the Federal Rules of Evidence.

3. None of AMOSUP plaintiffs appeared at the time of trial. All eight (8) of AMOSUP plaintiffs were or are still in defendants' employ. These plaintiffs were, at all times relevant herein, under defendants' dominion and control.

4. The Philippine plaintiffs were recruited in Manila by Western Shipping Agency, a Philippine corporation and manning agent for defendants, Delica and Inui. The plaintiffs were being recruited for the first voyage of the M/V Pine Forest.

5. Each plaintiff signed an individual employment contract agreeing to serve on board the M/V Pine Forest. The contracts were signed in blank by plaintiffs at the Western Shipping office in Manila. There were no figures inserted therein for each plaintiffs' wages and, instead, the plaintiffs were told generally what the wage rates would be.

6. Each plaintiff joined the M/V Pine Forest in Japan on March 27, 1989, with the exception of plaintiffs Raby and Galua, who joined the vessel on July 22, 1989 and January 8, 1990, respectively. At that time, each plaintiff signed shipping articles on board the vessel that were in the sub-

stance and form prescribed by the Republic of Vanuatu. The shipping articles incorporated the Worldwide International Transport-Worker's Federation Collective Agreement and contained a significantly higher pay scale than the oral representations made to plaintiffs by Western Shipping Agency in Manila. The shipping articles set forth the base monthly wage next to each seafarer's name and signature.

7. On September 14, 1989, unknown to plaintiffs, the shipowner through its agent, Western Shipping Co., Ltd. in Manila, entered into a joint JSU/AMOSUP Collective Bargaining Agreement. Defendants recognized AMOSUP as the exclusive collective bargaining representative of all the Filipino seamen aboard the M/V Pine Forest. The AMOSUP Collective Bargaining Agreement contained significantly lower wages than those contained in the shipping articles and ITF Collective Bargaining Agreement executed by the plaintiffs when they boarded the M/V Pine Forest.

8. The defendants executed the JSU/AMOSUP agreement for the sole purpose of obtaining an ITF blue certificate and to enroll the M/V Pine Forest with the ITF. At all times relevant hereto, defendants never obtained the "blue certificate." Thereafter, the Pine Forest traded exclusively between Japan and the Northwest coast of the United States.

9. From the date the plaintiffs joined the M/V Pine Forest until the vessel was arrested in Tacoma, Washington, on January 31, 1990, the vessel called on United States ports a total of eight times, arriving on the following dates in 1989: April 9th, May 17th, June 22nd, August 1st, September 17th, October 26th, December 8th, and January 24, 1990. All of these voyages were between the United States and Japan.

10. The M/V Pine Forest carried logs and wood products from the Pacific Northwest to Japan. Upon returning to United

States waters, it would discharge ballast and take on cargo. This court finds that ballast discharged is "cargo" as that term is used in 46 U.S.C. Section 10313(f). One hundred percent of the income of the M/V Pine Forest since its launching was earned from these voyages carrying wood products from the United States to Japan and back.

11. The plaintiffs were paid on a monthly basis. Each month the plaintiffs executed a pay voucher or "wage receipt" wherein each plaintiff certified he received the wages and benefits called for in the shipping articles and the ITF Collective Bargaining Agreement incorporated therein. Plaintiffs never received the wages specified in the Shipping Articles.

12. The shipowner also required the plaintiffs to sign a separate receipt for wages actually paid by the master and received by each plaintiff. This practice is referred to by defendants as the keeping of "double books." At least one instance of double-bookkeeping occurred in the United States while the vessel was in Longview, Washington.

13. Defendants admit that they never intended to comply with the shipping articles and ITF wage scale. The conduct of defendants in the practice of double-bookkeeping and in its refusal to pay plaintiffs their rightful wages was fraudulent, intentional, and in bad faith. The seamen were in a very vulnerable position and were easily intimidated.

14. Plaintiffs signed receipts for the wages specified in the shipping articles while in United States waters only once, but defendants knew that all of the monthly wage receipts stipulating the higher wages were on board the M/V Pine Forest each time plaintiffs wages were wrongfully withheld at the end of eight separate voyages to United States waters.

15. In these circumstances, plaintiffs' execution of the ship-

ping articles and their signing the wage receipts for the wages set forth in the shipping articles constituted a legally sufficient demand for payment of wages.

16. Plaintiffs' demand for wages and the defendants' illegal withholding of wages occurred while both plaintiffs and the M/V Pine Forest were in U.S. Harbors or waters at the end of eight separate voyages from Japan to the United States.

17. The defendants' fraudulent actions requiriung plaintiffs to sign two sets of conflicting wage receipts was a repudiation of their contractual obligation to pay plaintiffs the wages specified in the shipping articles, and discharged, by operation of law, plaintiffs duty to make formal demand for wages.

18. Application of 46 U.S.C. Section 10313(e) was triggered when plaintiffs' demand for payment of half wages earned and unpaid at each port at which the vessel discharged ballast was refused. Application of 46 U.S.C. Section 10313(f) was triggered when, at the end of a voyage, plaintiffs were not paid the balance of wages owing.

19. On January 31, 1989, the M/V Pine Forest was arrested in Tacoma, Washington. All plaintiffs except Silverio and Cabiltan were aboard the vessel. Plaintiffs were claiming back due wages in accordance with the ITF shipping articles they had executed and which were their contract of employment.

20. On February 13, 1990, the total sum of $267,585.65 was tendered by defendants to the original thirteen plaintiffs for wages claimed through January 24, 1990, but the tender did not include penalty wages. The amount tendered did not include $15,019.20 in wages earned by the seamen between January 24th and February 8th, the date of final discharge which amount was claimed in plaintiffs' amended complaints for back wages. Payments were made without admission of liability and

with reservations of right to collect same if court found in favor of defendants. Penalty wages are included in the definition of wages. Defendants have failed to show sufficient cause for withholding payment of penalty wages once back due wages were paid in February of 1990.

21. At the time the thirteen original plaintiffs signed off the M/V Pine Forest in Tacoma, Washington, defendants directed the captain to make a notation in each plaintiffs' Seamen's Book in the column entitled "Reason for Discharge: Requested repatriation upon filing wage claim to arrest vessel."

22. These notations in the plaintiffs' Seamen's Books rendered them unemployable in the Philippines as merchant seamen and they have been effectively "black listed" from obtaining future employment on ocean-going vessels.

23. It was the intent of the defendants, when the notations were made, to punish the plaintiffs for having made a claim for their wages by entering the above-notations and making them unemployable as merchant seamen.

24. After the repatriation of the thirteen original plaintiffs to the Republic of the Philippines, none of them were able to find employment as seamen because of the notations made in each plaintiffs' Seamen's Books. At least four of the plaintiffs were personally refused employment.

25. The plaintiffs are not able to obtain new Seamen's Books because of the applicable regulations of the Philippine Coast Guard and will not be able to do so in the future.

26. Any overtime worked by plaintiffs never appeared in the ship's log.

27. Defendants ordered the captain of the M/V Pine Forest to alter the ship's shipping articles. The captain then ordered the chief engineer to actually alter the articles.

28. All of the other defendants' ships have been and are now operated in the same manner as the M/V Pine Forest as to the payment of seamen's wages and double bookkeeping.

29. Before the M/V Pine Forest left Tacoma, after the arrest, six of the AMOSUP plaintiffs executed documents entitled "Voluntary Dismissals" prepared by defense counsel with plaintiffs' signatures procured by the master of the vessel. The court finds that these documents were executed by plaintiffs under conditions of intimidation and coercion, and, therefore, they have no legal effect.

30. The court finds that each trip of the M/V Pine Forest from Japan to the United States was a "voyage" as that term is used in 46 U.S.C. Section 10313.

31. This court finds that the conduct by the defendants at all times relevant herein was intentional, deliberate, reckless, callous, flagrant, malicious, indifferent, and unconscionable. That such conduct by the defendants was to intimidate, coerce and punish the plaintiffs. That such conduct was in complete disregard of the plaintiffs' rights. That defendants' conduct at all times relevant herein, violates the laws and public policy of the United States. The plaintiffs herein are entitled under statute and general maritime law of the United States to the protection of the courts.

32. The facts and circumstances in this case have convinced this court that plaintiffs are entitled to punitive damages in such an amount as will punish the defendants to stop their past, continuing and ongoing tortious conduct in operation of the M/V Pine Forest and those other ships that they operate that sail into any port in the United States. That the awarding of punitive damages against the defendants will serve to punish defendants for their conduct and to deter others from following defendants' example.

33. The thirteen (13) Original Plaintiffs are entitled to back pay including penalty wages as follows:

13 ORIGINAL PLAINTIFFS	BACK WAGES	PENALTIES (as of 5/21/90)
Camilo Alvarado	$ 7,235.88	$ 597,706.96
Nelson Raby	2,894.19	205,187.25
Teofaniz Roz	1,555.95	480,685.44
Apolonio Torreliza	1,621.29	480,685.44
Leo Ajero	1,762.72	463,426.56
Teodoro Rabie	2,894.19	280,613.44
Modesto Berido	875.91	280,613.44
Marcelo Suarez	875.91	280,613.44
Miguelto Cabales	1,240,61	280,613.44
Teodoro Marquez	548.26	210,381.76
Leonardo Bonnit	626.19	210,381.76
Hermenigildo Banogon	938.79	210,381.76
Cervasito P. Laxina	626.19	210,381.76

34. The eight (8) AMOSUP plaintiffs are entitled to back wages and penalties as follows:

S. Galua	$ 2,686.90	$ 26,329.68
Bonifacio Tabada	9,551.57	480,685.44
Can Machete	29,175.90	463,462.56
Francisco Yabo	18,096.49	311,428.80
Guelberto Bete	16,065.54	280,613.44
G. Villaruel	16,065.54	280,613.44
Russel Silrerio	20,044.20	391,924.43
Mario Cabiltan	30,549.91	564,404.72

35. The thirteen (13) Original Plaintiffs are entitled to compensatory damages which includes loss of future income and mental distress, as follows:

13 ORIGINAL PLAINTIFFS:	LOSS OF FUTURE INCOME	EMOTIONAL DISTRESS
Camilo Alvarado	$ 950,586.00	$ 100,000.00
Nelson Raby	892,534.00	100,000.00
Teofaniz Roz	649,665.00	100,000.00
Apolonio Torreliza	554,737.00	100,000.00
Leo Ajero	676,302.00	100,000.00
Teodoro Rabie	379,260.00	100,000.00
Modesto Berido	390,009.00	100,000.00
Marcelo Suarez	464,441.00	100,000.00
Miquelito Cabales	480,301.00	100,000.00
Teodoro Marquez	360,091.00	100,000.00
Leonardo Bonit	353,874.00	100,000.00
Hermenegildo Banogon	341,649.00	100,000.00
Guelberto P. Laxina	307,021.00	100,000.00

36. The eight (8) AMOSUP plaintiffs are entitled to compensatory damages for mental distress as follows:

AMOSUP PLAINTIFFS:	LOSS OF FUTURE INCOME	EMOTIONAL DISTRESS
S. Galua	NONE	$ 50,000.00
Bonifacio Tabada	NONE	50,000.00
Can Machete	NONE	50,000.00
Francisco Yabo	NONE	50,000.00
Guelberto Bete	NONE	50,000.00
G.Villaruel	NONE	50,000.00
Russel Silrerio	NONE	50,000.00
Mario Cabiltan	NONE	50,000.00

37. All plaintiffs are entitled to punitive damages as follows:

13 ORIGINAL PLAINTIFFS:	PUNITIVE DAMAGES
Camilo Alvarado	$ 1,000,000.00
Nelson Raby	1,000,000,00
Teofaniz Roz	1,000,000.00
Apolonio Torreliza	1,000,000.00
Leo Ajero	1,000,000.00
Teodoro Rabie	1,000,000.00
Modesto Berido	1,000,000.00
Marcelo Suarez	1,000,000.00
Miguelito Cabales	1,000,000.00
Teodoro Marquez	1,000,000.00
Leonardo Bonnit	1,000,000.00
Hermenigildo Banogon	1,000,000.00
Cervasito P. Laxina	1,000,000.00
AMOSUP PLAINTIFFS:	
S. Galua	500,000.00
Bonifacio Tabada	500,000.00
Can Machete	500,000.00
Francisco Yabo	500,000.00
Guelberto Bete	500,000.00
G. Villaruel	500,000.00
Russel Silrerio	500,000.00
Mario Cabiltan	500,000.00

38. The plaintiffs, as the prevailing party herein , are entitled to be awarded reasonable attorneys' fees, and interest.

The court finds the foregoing Findings of Fact to have been shown by a preponderance of the evidence in this matter.

From the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

All Findings of Fact more appropriately termed Conclusions of Law will be incorporated as such.

1. This court has jurisdiction of this matter under the United States Constitution Article III pursuant to federal Admiralty and Maritime jurisdiction; 28 U.S.C. Section 1333; and pursuant to 46 U.S.C. Section 10313(i) of the Shipping Code.

2. That defendant vessel and plaintiffs were located in Tacoma, Pierce County, Washington at the time of the filing of the complaint herein.

3. Federal law rather than State of Washington law controls damage issues when the cause of action arises under Federal Maritime Law.

4. All of plaintiffs' claims for back wages, including penalty wages, compensatory damages for tort, and punitive damages are properly before this court. Defendants' intentional, fraudulent, bad faith conduct is a maritime tort resulting in a maritime lien for compensatory and punitive damages.

5. The tolling of the statute of limitations does not occur until back due wages and penalties have been paid in full.

6. The seamen are entitled to two days' wages for each day payment was withheld from the date of each wrongful withholding until full wages and penalties wages are paid. Penalty wages will continue to accrue at two times each plaintiff's rate of pay until the actual payment is received. Those plaintiffs hereinafter mentioned are awarded as back pay including penalties the following sums of money:

13 ORIGINAL PLAINTIFFS	BACK WAGES	PENALTIES
Camilo Alvarado	$ 7,235.88	$ 597,706.96
Nelson Raby	2,894.19	205,187.25
Teofaniz Roz	1,555.95	480,685.44
Apolonio Torreliza	1,621.29	480,685.44
Leo Ajero	1,762.72	463,426.56
Teodoro Rabie	2,894.19	280,613.44
Modesto Berido	875.91	280,613.44
Marcelo Suarez	875.91	280,613.44
Miguelto Cabales	1,240.61	280,613.44
Teodoro Marques	548.26	210,381.76
Leonardo Bonnit	626.19	210,381.76
Hermenigildo Banogon	938.79	210,381.76
Cervasito P. Laxina	626.19	210,381.76
AMOSUP PLAINTIFFS:		
S. Galua	2,686.90	26,329.68
Bonifacio Tabada	9,551.57	480,685.44
Can Machete	29,175.90	463,462.56
Francisco Yabo	18,096.49	311,428.80
Guelberto Bete	16,065.54	280,613.44
G. Villaruel	16,065.54	280,613.44
Russel Silrerio	20,044.20	391,924.43
Mario Cabiltan	30,549.91	564,404.72

7. Those plaintiffs hereinafter mentioned are awarded as compensatory damages for the outrageous, malicious and intentional conduct of the defendants, especially, but not limited to, the entry of the notations in the thirteen Seamen's Books. The making of the notations made the thirteen Seamen unemployable. That such conduct of the defendants was for retaliation and punishment of the plaintiffs for requesting what they were lawfully entitled to, their wages. That defendants conduct at all times relevant herein, caused plaintiffs duress, emo-

tional distress, and prevented them from being employable as seamen.

13 ORIGINAL PLAINTIFFS	LOSS OF FUTURE INCOME	EMOTIONL DISTRESS
Camilo Alvarado	$ 950,586.00	$ 100,000.00
Nelson Raby	892,534.00	100,000.00
Teofaniz Roz	649,665.00	100,000.00
Apolonio Torreliza	554,737.00	100,000.00
Leo Ajero	676,302.00	100,000.00
Teodoro Rabie	379,260.00	100,000.00
Modesto Berido	390,009.00	100,000.00
Marcelo Suarez	464,441.00	100,000.00
Miguelito Cabales	480,301.00	100,000.00
Teodoro Marquez	360,091.00	100,000.00
Leonardo Bonnit	353,874.00	100,000.00
Hermenigildo Banogon	341,649.00	100,000.00
Guelberto P. Laxina	307,021.00	100,000.00
AMOSUP PLAINTIFFS:	**LOSS OF FUTURE INCOME**	**EMOTIONAL DISTRESS**
S. Galua	NONE	$ 50,000.00
Bonifacio Tabada	NONE	50,000.00
Can Machete	NONE	50,000.00
Francisco Yabo	NONE	50,000.00
Guelberto Bete	NONE	50,000.00
G. Villaruel	NONE	50,000.00
Russel Silrerio	NONE	50,000.00
Mario Cabiltan	NONE	50,000.00

8. That plaintiffs hereinafter mentioned are awarded punitive damages under general maritime law because of the callous, deliberate, unconscionable, reckless, indifferent, intentional, flagrant, fraudulent, unlawful and malicious conduct of defendants' agents at all times relevant herein. The evidence is clear

and convincing and beyond a preponderance of the evidence that defendants' agents were at all times acting within the scope of their employment and were acting for and at the direction of the defendants.

13 ORIGINAL PLAINTIFFS:	PUNITIVE DAMAGES
Camilo Alvarado	$ 1,000,000.00
Nelson Raby	1,000,000.00
Teofaniz Roz	1,000,000.00
Apolonio Torreliza	1,000,000.00
Leo Ajero	1,000,000.00
Teodoro Rabie	1,000,000.00
Modesrto Berido	1,000,000.00
Marcelo Suarez	1,000,000.00
Miguelito Cabales	1,000,000.00
Teodoro Marquez	1,000,000.00
Leonardo Bonnit	1,000,000.00
Hermenigildo Banogon	1,000,000.00
Cervasito P. Laxina	1,000,000.00

AMOSUP PLAINTIFFS:	PUNITIVE DAMAGES
S. Galua	500,000.00
Bonifacio Tabada	500,000.00
Can Machete	500,000.00
Franciso Yabo	500,000.00
Guelberto Bete	500,000.00
G. Villaruel	500,000.00
Russel Silrerio	500,000.00
Mario Cabiltan	500,000.00

9. Defendants are entitled to an offset in the amount of $267,585.65.

10. Any and all documents signed by plaintiffs herein after the arrest of the vessel are null and void and have no legal

effect. Plaintiffs have shown good cause pursuant to 46 U.S.C. Section 10313(e), and the Voluntary Dismissals are hereby set aside.

11. In accordance with 46 U.S.C. 10313, prejudgment interest is awarded to the plaintiffs on the award of back wages and on penalty wages, on the date when the wages first came due, i.e., when the ship entered United States waters. Interest shall begin to run on the compensatory and punitive damages as of the date of entry of judgment herein.

13. Interest is awarded and shall accrue in accordance with 28 U.S.C. Section 1961. Judgment is entered against the defendants, the M/V Pine Forest *in rem* and Delica Shipping, S.A. and Inui Steamship Co. Ltd., jointly and severally *in personam* for plaintiffs' compensatory and punitive damages, back wages, penalty wages, and for reasonable attorneys' fees, interest and costs.

14. Plaintiffs as the prevailing party herein shall be awarded reasonable attorneys' fees in an amount to be determined at a later date. Award of attorneys' fees is predicated on defendants' bad faith and is proper under *Vaughan v. Atkinson*, 369 U.S. 527, 82 S.Ct. 997, 8 L.Ed. 2d 88 (1962).

15. The plaintiffs shall recover their costs and expenses in such sums as are determined by the clerk of the court.

16. Judgment is further entered for additional penalty wages which shall continue to accrue for each plaintiff seaman from May 21, 1990, at two (2) times each plaintiff's daily rate of pay until actual receipt of payment. The exact amount of these additional penalty wages shall be computed at the time of payment.

DATED this 6th day of AUGUST 1990.

/s/ Jack E. Tanner
UNITED STATES DISTRICT JUDGE

Underpaid in Salary Scheme, 21 Sailors to Get $32 Million

By TIMOTHY EGAN
Special to The New York Times

SEATTLE, Aug. 8 — In what shipping industry officials call the largest wage award in maritime history, a Federal district judge has ordered that 21 Filipino sailors be given $32 million to make up for a wage system in which some were paid only a fraction of what was reported by ship owners.

Some of the sailors made no more than $100 a month, which is barely a day's wage for an American seaman, but had signed wage statements indicating they made as much as eight times that amount, lawyers for the sailors said.

The ruling, issued Monday in Tacoma by Judge Jack Tanner, has brought to light a wage practice that union and shipping officials say is widespread in the maritime industry.

Lawyers for the ship owners, the Delica Shipping Comany, said they would appeal the decision. One of them, Joseph S. Stacey, said the "so-called double-book arrangement is an accepted practice" within the industry and that the sailors willingly took part in it.

Contributing to Job Decline

By paying foreign sailors far less than called for by international union agreements, some ship owners have come to rely on inexpensive labor to keep their costs down. Union officials say this has contributed to the decline of the American shipping industry, where there are only about 15,000 jobs in a merchant marine system that employed 54,000 people 20 years ago.

In his ruling, Judge Tanner said the Filipino sailors were recruited on the promise of much higher wages than they were paid. Once they were at sea, the judge said, the sailors had to agree to the deceptive wage system as a term of employment.

He called the wage practices of Delica Shipping "flagrant, malicious, indifferent and unconscionable." The company employed the Filipino crew on a vessel carrying logs from the Pacific Northwest to Japan.

Judge Tanner suggested that the Justice Department look into the wage system for possible criminal violations.

The shipping company, incorporated in Panama, is a subsidiary of the Inui Steamship Company of Japan. Testimony indicated that the deceptive wage practice had been going on for eight years, although the lawsuit covered only about a year of service for the 21 seamen. The suit did not name officers of the company.

Richard Dodson, one of the attorneys for the sailors, said Inui saved about $35 million over eight years by underpaying its sailors.

The company was sued under United States laws that require ships sailing into American ports pay their sailors the agreed-upon wage. The judge awarded the sailors $150,000 in back wages, $15 million in compensatory and penalty wages and $17 million in punitive damages.

"This could improve the situation for thousands of seafarers," said Jim Lafferty of the Center for Seafarers' Rights in New York.

The case evolved out of an investigation by the center after two of the sailors complained that they were being cheated. Mr. Lafferty said the previous highest wage award in a maritime wage dispute was $2.6 million.

Mr. Stacey, the lawyer for the shipping company, said the ship-owners keep two sets of books to meet requirements by the International Transport Workers Federation, which monitors wage compliance. "The point is whether this can be called fraud when the plaintiffs knew the situation going into it," he said.

Bob Amon, a spokesman for the National Maritime Union-Marine Engi-

neers Benevolent Association of New York, which represents American seamen, said: "This shows how rotten the whole system has become. This is the kind of wage system that is killing the American shipping industry."

New York Times, August 9, 1990

Shipping Concern Faces $43 Million Penalty

TACOMA, Wash., July 14 (AP) — A Federal district judge here says he will probably impose a $43 million penalty against a Japanese shipping company for keeping double books to avoid paying a crew of 21 Filipinos most of the wages called for under industry-union agreements.

Experts say a wage judgment of that size would be the largest in American maritime history.

The indication of the judge's thinking came at a post-trial hearing Friday when he was asked by the crew members' lawyer, Richard Dodson, to award them not only $150,000 in back pay but also $16 million in compensatory damages and $27 million in punitive damages.

The judge, Jack Tanner, responded by telling lawyers for the company, Delica Shipping: "You're looking at a judgment near or around that figure. This case cries out for punitive damages in a substantial amount of money, both to punish your client and to deter others for such outrageous, malicious and intentional conduct."

Judge Tanner is expected to issue his decision setting the exact amount of damages later this summer.

Two Sets of Books

During the recent trial of the case, the two sides agreed that Delica Shipping, whose vessels carry logs from the Pacific Northwest to Japan, had kept two sets of wage books on all its ships for the last eight years. Among these ships was the Pine Forest, which was seized by the Federal Government in Tacoma six months ago, after complaints from the Filipino crew, and was released only after the company had posted a $19 million bond.

Both sides also agreed that the Pine Forest crew had been required to sign two sets of monthly wage receipts, one indicating payment according to levels specified in industry agreements with the International Transport Workers Federation and the other showing the actual pay rate.

The crew members, hired in March 1989, said they had been paid only 20 percent of the contractual rate. When 13 of them asked to leave the ship to pursue their wage claims, they were blacklisted from future work, testimony indicated.

The company's lawyers argued that Judge Tanner lacked jurisdiction in the case.

New York Times, July 15, 1990